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# Does the Individuals with Disabilities Education Act Require a Public School District to Provide a Quadriplegic Student with Continuous Nursing Service?

Jay E. Grenig
*Marquette University Law School*, jay.grenig@marquette.edu



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# Case at a Glance

The Individuals with Disabilities Education Act requires public school districts to provide "special education and related services" to children with disabilities. This case asks the Supreme Court to determine whether a school district is required to provide continuous, one-on-one nursing services for a quadriplegic student.



# Does the Individuals with Disabilities Education Act Require a Public School District to Provide a Quadriplegic Student with Continuous Nursing Service?

*by Jay E. Grenig*

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Jay E. Grenig is a professor of law at Marquette University Law School, Milwaukee, WI; (414) 288–5377. He is the co-author of *West's Handbook of Federal Civil Discovery and Disclosure.*

## ISSUE

Does the Individuals with Disabilities Education Act ("IDEA") require a public school district to provide a quadriplegic student with continuous nursing services?

## FACTS

In 1987, 4-year-old Garret F. was severely injured when his blanket caught in the drive mechanism of the motorcycle on which he was riding. Although Garret's mental abilities were not affected, a spinal cord injury left him a quadriplegic and dependant on a ventilator.

Garret started kindergarten in the Cedar Rapids Community School District a year later. During the school day, he requires a personal attendant within hearing distance of him at all times to see to his health care needs. Garret requires urinary bladder catheterization about once a day, suctioning of his tracheostomy as needed, food and drink on a regular schedule, repositioning, ambu bag administration if the ventilator malfunctions, ventilator setting checks, observation for respiratory distress or autonomic hyperreflexia, blood pressure monitoring, and bowel disimpaction in cases of autonomic hyperreflexia. From kindergarten through the fourth grade, Garret's family provided the personal attendant.

Garret's family sees to his health care needs when Garret is at home after school and on weekends. On weeknights, an LPN is present to check on Garret every two hours as he sleeps.

Garret's mother requested that the District provide Garret's nursing services while he was at school. The District refused, claiming it had no obligation to provide continuous, one-on-one nursing services.

Relying on the IDEA, 20 U.S.C. §§ 1400–1491, and Iowa special education laws, Garret's mother administratively challenged the District's position. An administrative law judge concluded that the District

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was required to reimburse Garret's mother for the nursing costs she had incurred during the 1993–94 school year and to provide such services in the future.

The District appealed to the United States District Court for the Northern District of Iowa. The district court granted summary judgment in favor of Garret, finding that the services were not within the "medical services" exclusion of the IDEA. The District appealed.

The Eighth Circuit affirmed the judgment. 106 F.3d 822 (8th Cir. 1997). The court held that continuous nursing service was a "related service" that the IDEA required the District to provide because it was supportive and not an excluded medical service. Because Garret's services were provided, not by a physician, but by a nurse, the court held that the services were not medical services, but rather school health services or supportive services, both of which meet the definition of "related services" that the District must provide.

The Supreme Court granted the District's petition for certiorari to review the Eighth Circuit's decision. 118 S.Ct. 1793 (1998).

## Case Analysis

Congress enacted the Education for All Handicapped Children Act in 1975 in response to the widespread failure of school systems to provide appropriate education to children with disabilities. The Act was renamed the Individuals with Disabilities Act in 1990. The IDEA was amended in 1997.

The IDEA requires each state to adopt and implement a policy that insures a "[f]ree appropriate public education" for all children with disabilities within the state. A free appropriate public education means "special education and related services."

Once it is determined that a child has a disability covered by the IDEA and qualifies for special education services, the child is eligible for any related service required to meet his or her educational needs. The IDEA defines "related services" as transportation and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. 20 U.S.C. § 1401(a)(17).

Regulations promulgated by the Department of Education define a "related service" as any service "required to assist a child with a disability to benefit from special education." 34 C.F.R. § 300.16(a). Related services expressly include "school health services," meaning "services provided by a qualified school nurse or other qualified person." 34 C.F.R. § 300.16(b)(11). The regulations provide that covered "medical services" are "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." 34 C.F.R. § 300.16(b)(4). The regulations do not expressly define which medical services are excluded.

Garret's mother thus argues that the District is required by federal and state law to provide Garret with the services in question. She says that without these services, Garret would not have meaningful access to a free public education and would be consigned to homebound instruction and deprived of the stimulation provided by a classroom.

The District contends that the IDEA does not require it to hire a specially trained nurse to attend continuously and exclusively to Garret's health care needs while he is at school. According to the District, requiring a local school district to provide intensive, continuous one-on-one nursing services as part of its "free and appropriate public education" mandate would undermine the literal language and the basic purpose of the federal law.

The District argues that the term "medical" in the IDEA should have a plain, common-sense meaning, as it does when used in other federal statutes and in other contexts. It says that "medical" services do not have to be directly administered by a licensed physician but can be furnished by other competent health care providers.

The question of whether health care services must be provided by a school district should not be decided by a mechanical, "physician/non-physician" test, according to the District. It says the outcome should depend upon a series of factors, such as whether the care is continuous or intermittent, whether existing school health personnel can provide the service, the cost of the service, and the potential consequences if the service is not properly performed. According to the District, Congress clearly intended schools to utilize their resources for educational purposes and does not require them to undertake financial responsibility for many other ser-

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vices, even if necessary for a child to benefit from the educational services offered by the school.

On the other hand, Garret's mother argues that the Supreme Court has established a "bright-line" rule for cases such as this one. She says this line is drawn between services that must be performed by physicians (except those performed for the purpose of diagnosis or evaluation) and those provided by other providers, including school nurses. Garret's mother asserts that the bright-line test is consistent with the clear language of the IDEA and the regulations of the Department of Education.

It is the District's position that the costs of providing continuous one-on-one nursing services to Garret are significantly beyond the educational resources the District is required to spend. It notes that the federal government's share of funding for special education services was only $413 for each child served. Pointing out that it received approximately $12,780 in state and local tax money on account of Garret's enrollment in 1994, the District says the funding for his needs is inadequate even without taking into account Garret's need for continuous nursing services. The District estimates that hiring a nurse to care for Garret from the time he left home on the bus until he returned home would cost between $28,630 and $39,810 a year.

According to Garret's mother, the District has exaggerated the potential cost of services for Garret. She claims that the District provides a teacher associate to assist with turning pages in books and organizing Garret's desk who is compensated at $9,548. She says that an RN could be hired for $27,981.79 a year, and that if an RN were hired, the teacher associate would not be necessary. Garret's mother concludes that the net cost to the District of an RN would be approximately $18,000. Garret's mother also asserts that the District provides most of the needed services to other District pupils, including intermittent catheterization (done primarily by teachers or teacher assistants), assistance in consuming food and drinking water, monitoring blood sugar levels, suctioning of tracheostomies, and positioning services. According to Garret's mother, expense should not be a determining factor as to whether nursing services are excluded, as this will lead to protracted litigation in many cases.

The District, however, observes that the Iowa Board of Nursing has formally ruled that the care required by Garret could not be delegated to a non-licensed practitioner because of the complex nature of the student's care; the number of activities that include the core of the nursing process and require specialized nursing knowledge, judgment and skill; the school nurse/student ratio severely limiting the amount of training and supervision a school nurse would be able to provide the non-licensed personnel; the absence of a school nurse in the building at all times; and the potential risk of serious harm or injury to Garret if he does not receive adequate care.

Garret's mother argues that the Board's opinion was based on the District's misstatement of the stability level of Garret's health. She claims that the District's position throughout has been that it would be required to use a registered nurse rather than an aide or LPN to care for Garret. According to Garret's mother, none of the required services for Garret need to be performed by a physician or an RN. Garret's mother notes that when Garret is not in school, the services are provided primarily by his parents and other non-health-care professionals, including friends.

## SIGNIFICANCE

In *Irving Independent School District v. Tatro,* 468 U.S. 883 (1984), the Supreme Court set forth a two-step test for determining if a service is a related service under the IDEA. First, a court must determine whether the service is a supportive service required to assist a child with a disability to benefit from special education. If it is, then the court must determine if the service is excluded from the definition of supportive service as a medical service beyond diagnosis or evaluation.

In *Tatro,* the Supreme Court explained that services permitting a child to remain at school during the day are no less related to the effort to educate than are services that enable the child to reach, enter, or exit the building that are expressly provided for in the IDEA.

With respect to whether the services are excluded from the definition of supportive services as medical services beyond diagnosis and evaluation, the Eighth Circuit interpreted the Supreme Court's decision in *Tatro* as providing a bright-line test for determining whether the requested services are excluded as medical services. According to the Eighth Circuit, the Supreme Court has held that the services of a physician (other than for diagnostic and evaluation purposes) are subject to the medical services exclusion, but that services that can be provided in the school setting by a nurse or qualified layperson are not.

Some courts have not interpreted *Tatro* as establishing a bright-line physician/non-physician test for medical services. *See, e.g., Detsel v. Board of Educ.,* 637 F.Supp. 1022 (N.D.N.Y. 1986), *aff'd,* 820 F.2d 587 (2d Cir.), *cert. denied,* 484 U.S. 981 (1987); *Fulginiti v. Roxbury Township Public Schools,* 921 F.Supp. 1320 (D.N.H. 1996), *aff'd without published opinion,* 116 F.3d 468 (3d Cir. 1997); *Neely v. Rutherford County School,* 68 F.3d 965 (6th Cir. 1995); *Clovis Unified School Dist. v. California Office of Admin. Hearings,* 903 F.2d 635 (9th Cir. 1990); *Granite School Dist. v. Shannon M.,* 787 F.Supp. 1020 (D.Utah 1992).

In *Detsel,* the court held that the daily nursing service for a child who needed constant respirator assistance was an excluded "medical service" and not a covered "related service" under IDEA. *Accord, Bevin H. v. Wright,* 666 F.Supp. 71 (W.D.Pa. 1987) (school district exempt from having to provide continuous one-on-one nursing services).

The Ninth Circuit in *Clovis Unified School District* construed *Tatro* as holding only that services that must be provided by a licensed physician, other than those that are diagnostic or evaluative, are excluded and school nursing services of a simple nature are not excluded. According to the Ninth Circuit, "[I]t would do havoc to the structure of the Act to exclude only the services of licensed physicians . . . and to require the school district to pay for all other services."

In *Neely,* the Sixth Circuit held that tracheostomy suctioning and potential ambu bagging services required by a student were excluded "medical services." The court said the better interpretation of *Tatro* is that a school district is not required to provide every service that is medical in nature, but that the burden on the school district must be considered along with the nature and extent of the services.

The district court in *Fulginiti* held that ongoing nursing services for a child with dysfunction of her nervous system requiring monitoring of a tracheostomy tube and suctioning were an uncovered "medical service."

Another district court held in *Granite School District* that full-time nursing care for a child with neuromuscular atrophy and severe scoliosis was not a "related service" under the IDEA. The student used a tracheostomy tube that required constant attention. The court explained that the school district's three nurses could not provide this constant care, and the IDEA did not require the district to provide the student with full-time nursing/tracheostomy care as a supportive service.

Several federal courts have construed *Tatro* as holding that excluded medical services were limited to services directly administered by physicians. *Morton Community Unit School Dist. No. 709 v. J.M.,* 986 F.Supp. 1112 (C.D.Ill. 1997); *Skelly v. Brookfield LaGrange Park School Dist.,* 968 F.Supp. 385 (N.D.Ill. 1997); *Macomb County Interm. School Dist. v. Joshua S.,* 715 F.Supp. 824 (E.D.Mich. 1989).

In *Morton,* the district court held that a pediatric nurse or trained individual to monitor a student during the day was required under the IDEA as a related service. The court declined to adopt either a bright-line or multifactor test.

The district court in *Skelly* held that services provided by nurses and health-care personnel other than doctors are health-care services and not medical services excluded from a school district's obligation to provide related services under the IDEA. The court held that the suctioning of a tracheostomy tube is a common standard maintenance procedure that need not be performed by a physician and therefore is not an excluded medical service, even if a nurse is required to perform the procedure.

In *Macomb County Intermediate School District,* the district court held that transportation to and from school represented supportive service that a school district was required to provide to the student absent a showing of a need for the attention of a licensed physician during the transport. The hearing officer had found that the district was not required to transport the student because of potential complications arising from the suctioning of the defendant's tracheostomy tube during the transportation. The district court disagreed, holding that the medical services exclusion is limited to services provided by a licensed physician and does not include services of a trained medical professional other than a physician.

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The Supreme Court is called upon to resolve the disagreement among the lower courts regarding the medical services exclusion and to clarify its earlier ruling in *Tatro.* Should it rule in favor of the District, school districts will be spared the expense of providing services such as those requested here. Should the Court rule for Garret, the ruling will make it easier for students such as Garret to obtain a free appropriate public education.

## Attorneys of the Parties

**For Cedar Rapids Community School District** (Douglas R. Oelschlaeger; (319) 365–9461).

**For Garret F.** (Sue Luettjohann Seitz; (515) 243–7100).

## Amicus Briefs

**In support of Cedar Rapids Community School District**

National School Boards Association (Gwendolyn H. Gregory; (540) 687–3339).

**In support of Garret F.**

Joint brief: National Association of Protection and Advocacy Systems; American Music Therapy Association; ARC of the United States; Brain Injury Association, Inc.; Center for Law and Education; Children and Adults with Attention Deficit Disorders; Disability Rights Education and Defense Fund, Inc.; Higher Education Consortium for Special Education; Judge Dave L. Bazelon Center for Mental Health Law; National Assistive Technology Advocacy Project; National Parent Network on Disabilities; and TASH (Leslie Seid Margolis; (202) 408–9514);

Joint brief: American Academy of Pediatrics, The National Association of School Nurses, and Family Voices (Paul M. Smith; (202) 639–6000);

The United States (Seth P. Waxman, Solicitor General; Department of Justice; (202) 514–2217).